

Staff Summary Report



Council Meeting Date: 03/20/08

Agenda Item Number: _____

SUBJECT: Resolution approving and authorizing the Mayor to sign an Agreement between the City and Signature Place Condominium Association for landscape maintenance at the corner of Kyrene Road and Grove Parkway,

DOCUMENT NAME: 20080320cacc02 **STREET LANDSCAPE MAINT (0809-06)** Resolution No. 2008.23

SUPPORTING DOCS: No

COMMENTS: This Agreement establishes a public-private partnership to improve landscape maintenance within City rights of way at a cost to the City of approximately \$1,020 per year.

PREPARED BY: Don Hawkes, Water Utilities Department Manager (350-2660)

REVIEWED BY: Jeff Kulaga, Assistant City Manager (350-8844)

LEGAL REVIEW BY: Charlotte Benson, Senior Assistant City Attorney (350-2813)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Resolution No. 2008.23 approving and authorizing the Mayor to sign the Agreement for the City of Tempe.

ADDITIONAL INFO: This parcel of land is located within the triangular median at the intersection of Kyrene Road and Grove Parkway. The Signature Place Condominium Association is the private party entering into this partnership with the City.

RESOLUTION NO. 2008.23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT BETWEEN THE CITY AND SIGNATURE PLACE CONDOMINIUM ASSOCIATION FOR LANDSCAPE MAINTENANCE AT THE CORNER OF KYRENE ROAD AND GROVE PARKWAY.

WHEREAS, the Signature Place Condominium Association is responsible for maintaining the common property of Signature Place Condominiums at 600 West Grove Parkway in Tempe; and

WHEREAS, a triangular parcel abutting the Signature Place Condominiums was dedicated to the City of Tempe in 1985, and the landscaping on the dedicated parcel requires improved maintenance; and

WHEREAS, the City and the Association desire to cooperatively maintain the landscaping on the triangular parcel under the terms of this Agreement; and

WHEREAS, it is in the best interests of the City of Tempe that this public-private partnership to improve landscape maintenance at Kyrene Road and Grove Parkway be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, THAT:

The Agreement Between the City of Tempe and Signature Place Condominium Association for Landscape Maintenance at the Corner of Kyrene Road and Grove Parkway in Tempe is hereby approved, and

The Mayor is authorized to sign the Agreement for the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

When recorded,
Return to:
City of Tempe

**AGREEMENT BETWEEN THE CITY OF TEMPE AND SIGNATURE PLACE
CONDOMINIUM ASSOCIATION FOR LANDSCAPE MAINTENANCE AT THE
CORNER OF KYRENE ROAD AND GROVE PARKWAY IN TEMPE**

This Agreement is entered into between the City of Tempe ("City"), an Arizona municipal corporation, and Signature Place Condominium Association, an Arizona non-profit corporation ("Association") (collectively, the "Parties"), to provide for landscape maintenance at the northwest corner of Kyrene Road and Grove Parkway in Tempe.

RECITALS

A. Signature Place Condominium Association is responsible for the care and maintenance of the common property known as Signature Place Condominiums located at 600 West Grove Parkway in Tempe (the "Property").

B. A triangular parcel abutting the Property was dedicated to the City in the plat for Sanders Ranch Unit II in 1985 (Book 280-46) (the "Triangular Parcel").

C. The landscaping on the Triangular Parcel dedicated to the City as part of a roadway dedication has not been adequately maintained.

D. The City and the Association desire to cooperatively maintain the landscaping on the Triangular Parcel dedicated to the City at the corner of Kyrene Road and Grove Parkway.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. TERMS

1.1 This Agreement sets forth the agreement of the Parties to cooperate in maintaining the landscaping on the Triangular Parcel at the corner of Kyrene Road and Grove Parkway in Tempe.

1.2 The Association agrees that it will maintain the landscaping, including watering and controlling vegetation on the Triangular Parcel.

1.3 The City agrees to install a one-inch (1") landscape meter and to pay for water used in maintaining the landscaping on the Triangular Parcel.

1.4 The City agrees that it will be responsible for repairing and maintaining the retaining walls and signage located on the Triangular Parcel.

2. GENERAL PROVISIONS

2.1 This Agreement constitutes the full and complete understanding and agreement of the Parties as to the maintenance of landscaping on the Triangular Parcel at the corner of Kyrene Road and Grove Parkway. This Agreement supersedes any and all previous representations, understandings, and agreements relating to its subject matter. This Agreement may not be modified except in writing signed by both Parties.

2.2 This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. The term found invalid will be ineffective without invalidating the remaining terms and provisions of this Agreement.

2.3 This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

2.4 Any notice required under this Agreement shall be delivered to the following and shall be effective upon delivery. The designated representatives for notice purposes may be changed by written notice to the other Party.

For the City:

Donald B. Hawkes, Manager
Water Utilities Department
P.O. Box 5002
Tempe, AZ 85280
(480) 350-2660

For Signature Place Condominium Association:

Bernard/Allison Management Services, Inc.
Attention: Vicki Allison
2400 East Arizona Biltmore Circle, Suite 1400
Phoenix, AZ 85016
(602) 682-6653

2.5 Before resorting to any other remedies, the Parties agree to use mediation for a reasonable time to resolve any dispute or claim arising out of this Agreement.

2.6 This Agreement shall become effective upon filing with the Maricopa County Recorder.

2.7 This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Arizona. Any litigation between the Parties arising out of this Agreement or the performance of any of the obligations contained in this Agreement shall be in the courts of Maricopa County, Arizona.

2.8 This Agreement shall be binding upon the successors and assigns of the Parties. The Parties may not assign this Agreement or any of its rights, or delegate any performance under this Agreement without the prior written consent of the other Party.

2.9 Neither the Association nor the City shall grant to any other person or entity any rights that are inconsistent with, contrary to, or infringe upon any right of the other under this Agreement.

2.10 A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach.

2.11 The Parties will cooperate in good faith to reasonably complete the obligations set forth in this Agreement.

2.12 The term of this Agreement shall be for a period of twenty-five (25) years, unless terminated in writing by either Party with thirty (30) days notice to the other Party.

2.13 Neither Party shall be deemed to be in default for failure to perform any obligation contained in this Agreement if nonperformance or default is directly caused by strikes, lockout, non-availability of materials, war or national defense, preemptions, governmental restrictions, flood, storm, fire, or other catastrophic event, acts of God, or other causes beyond the reasonable control of either Party, provided that the affected party shall commence and continue its performance with diligence and continuity immediately after the cessation or removal of the cause of the nonperformance or default.

2.14 Neither Party shall have authority to act as the agent of the other, or to enter into any legal obligations binding on the other Party.

IN WITNESS WHEREOF, the Association and the City have caused their duly authorized representatives to execute this Agreement on their behalf this ____ day of _____, 2008.

CITY OF TEMPE, a municipal corporation of the State of Arizona

By: _____
Mayor

Attest:

City Clerk

City Attorney

SIGNATURE PLACE CONDOMINIUM ASSOCIATION

By: Abbot G. Apter
Abbot G. Apter
President